

REMARKS/ARGUMENTS

Reexamination of the captioned application is respectfully requested.

A. SUMMARY OF THIS AMENDMENT

By the current amendment, Applicants:

1. Editorially amend the specification at two junctures.
2. Amend the punctuation terminating claims 15 and 42.
3. Amend the dependency of dependent claim 23.
4. Add new dependent claims 80 – 91 (see section B infra)..
5. Respectfully traverse all prior art rejections.
6. Advise the Examiner of the simultaneous filing of an IDS to make of record in this application all references cited in U.S. Patent 6,519,461 to Andersson et al not yet made of record.

B. THE NEW CLAIMS

New dependent claims 80 – 91 depend in pairs from respective independent claims 1, 15, 28, 42, 55, and 68, and specify that the determination is based on packet reception time. The odd numbered ones of these new dependent claims further specify that the determination is based on packet reception time at a buffer of the node. The new claims are well supported, e.g., by page 13, lines 12 – 16 of the original disclosure.

C. PATENTABILITY OF THE CLAIMS

Claims 1-79 stand rejected under 35 USC §102(e) as being anticipated by U.S. Patent 6,519,461 to Andersson et al (see enumerated paragraph 2 of the Office Action). Claims 1-79 stand rejected under 35 USC §103(a) as being unpatentable over U.S. Patent 6,519,461 to Andersson et al (see enumerated paragraph 1 after enumerated paragraph 2 on page 2 of the Office Action). All prior art rejections are respectfully traversed.

To establish that a claim is invalid due to anticipation, the Examiner must point out where each and every limitation of the claim is found in the applied reference.¹ Every limitation contained in the claims must be present in the applied reference, and even if one limitation is missing from the applied patent, then it does not anticipate the claim.² Applicants submit that the applied fails to satisfy this rigorous burden with respect to all of Applicants' independent claims.

In rejecting all claims under 35 USC §102(e), office action incorrectly alleges that U.S. Patent 6,519,461 to Andersson et al makes a determination if an acceleration of packet transmission rate justifies a channel switch for the session and implements a channel switch in accordance with the determination. The office action cites col. 3, lines 55 – 65 as putative grounds for the allegation.

A basic technique of U.S. Patent 6,519,461 to Andersson et al is illustrated in Fig. 3. Fig. 3 shows distinct steps of determining a current load or throughput on a first type of channel (block 2); obtaining a data amount threshold using the detected load or throughput (block 3); and, comparing the current amount of data to be transmitted for a user connection to the amount threshold (block 4); and deciding whether to switch the user connection to a second type of channel based on the comparison (block 5).

Neither the amount threshold obtained at block 3 nor the current amount of data to be transmitted (block 4) of the applied reference are based on acceleration. The amount threshold of block 3 may be based on current load or throughput, but neither is indicative of a rate of change over time. While the applied reference does refer to load increases and threshold decreases (e.g., col. 8, lines 37- col. 9, line 15), there appears to be no teaching or suggestion of accessing such increases or decreases over time.

¹ *Scripps Clinic & Research Found. v. Genentec, Inc.*, 927 F.2d 1565 (Fed. Cir. 1991).

² *Kloster Speedsteel AB v. Crucible, Inc.*, 793 F.2d 1565 (Fed. Cir. 1986).

The applied reference teaches that the current amount of data to be transmitted (block 4) is determined by counting the number of packets stored in a transmit buffer associated with a user connection (see, e.g., col. 9, lines 16 – 26 and col. 3, lines 58 – 60). Such mere counting does not teach or suggest a determination of packet transmission acceleration.

The prior art rejections are certainly also fallacious with respect to the new dependent claims 80 – 91 which requires that the determination be based on packet reception time. U.S. Patent 6,519,461 to Andersson et al. does not teach or suggest such a determination based on packet reception time.

Applicants' comments herein are not intended nor should they be construed as interpretations of commonly assigned U.S. Patent 6,519,461 to Andersson et al., and certainly not of its claims. Rather, Applicants merely assert that U.S. Patent 6,519,461 to Andersson et al does not teach or suggest the explicit feature of packet transmission acceleration.

In view of the foregoing and other considerations, it is respectfully submitted that all prior art rejections should be withdrawn.

D. MISCELLANEOUS

The Commissioner is authorized to charge the undersigned's deposit account #14-1140 in whatever amount is necessary for entry of these papers and the continued pendency of the captioned application, including but not limited to additional claims fee and the extension of time fee.

Should the Examiner feel that an interview with the undersigned would facilitate allowance of this application, the Examiner is encouraged to contact the undersigned.

ANDERSSON et al
Appl. No. 09/441,883
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Respectfully submitted,

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Attachments: IDS